

PLANNING & ZONING BOARD

MAY 23, 2001

7:30 P.M.

1. ROLL CALL

The meeting was called to order at 7:37 p.m. Board members present were Vice-Chair Jay Stahl, Mike Bender, Edna Moore, and Bob Waitkus. Also present were Town Attorney Monroe Kiar, Planner Chris Gratz and Board Secretary Janet Gale recording the meeting.

2. SELECTION OF CHAIR

Vice-Chair Stahl stated that one of the Councilmembers had not made her appointment to the Planning and Zoning Board and asked that Items 2 and 3 be tabled.

Ms. Moore made a motion, seconded by Mr. Bender, to table elections for Chair and Vice-Chair until the June 13, 2001 meeting. In a voice vote, all voted in favor. **(Motion carried 4-0)**

3. SELECTION OF VICE-CHAIR

Tabled until June 13, 2001.

4. PUBLIC HEARING

Rezoning

4.1 ZB 4-1-01, Evangelical Formosan Church/Daher, 1515 Hiatus Road (from A-1 to CF)

Mr. Gratz explained that residents had not received notices so staff recommended tabling this item and was going to send out new notices.

Mr. Waitkus made a motion, seconded by Mr. Bender, to table until June 13, 2001. In a voice vote, all voted in favor. **(Motion carried 4-0)**

Variance

4.2 V 3-2-01, MDM Services/BP/Amoco, 13625 State Road 84 (B-3)

Rick Peters, representing the petitioner, was present. Mr. Grate summarized the planning report (Planning and Zoning Division's recommendation: approval).

Vice-Chair Stahl asked if anyone wished to speak for or against this item. As no one spoke, the public hearing was closed.

Mr. Kiar recommended that Mr. Gratz further elaborate on the planning report for the benefit of the new Board member. Mr. Gratz complied and stated that the variance was necessary and had been unanimously approved at the prior hearing. Mr. Peters showed photographs of the site to the new Board member.

Mr. Bender made a motion, seconded by Ms. Moore, to approve. In a roll call vote, the vote was as follows: Vice-Chair Stahl - yes; Mr. Bender - yes; Ms. Moore - yes; Mr. Waitkus - yes. **(Motion carried 4-0)**

Special Permit

4.3 SE 5-1-01, Schmidt, 12070 SW 22 Court (AG)

Celia Schmidt, the petitioner, was present. Ms. Schmidt stated that her situation was an unintentional mistake and explained that her lot was unusually shaped. Ms. Schmidt explained that she wanted to build a single story home and the reason for this special permit was that the architect was not aware of the correct setbacks on properties 35,000 square feet or less. She further explained that her house was over 3,500 square feet, therefore it required a 40-foot setback in front. Ms. Schmidt stated that there was a 36-foot setback in the back of her

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house and there was an eight-foot Ficus hedge which separated her property from the homes behind her. Ms. Schmidt felt that this special permit would not cause a hardship for her neighbors. She explained that the front of her property abutted the entranceway to the community, where there were a gate and four rows of landscaping hedges. Ms. Schmidt advised that there was no room in front of her house because of its position and this was why she was asking for the special permit for the rear section of her property. She stated that her other choice was to build a two-story home which would alleviate this problem and make it unnecessary to apply for a special permit.

Mr. Gratz read the planning report (Planning and Zoning Division's recommendation: approval, subject to the provisions as outlined in report).

Vice-Chair Stahl asked why this item was a special permit request rather than a variance request. Mr. Grate explained that it was unfair for all involved to review the request under a different set of criteria than that of an administrative special permit. Mr. Grate explained the similarities between an administrative special permit and a special permit, stating "the way variance criteria reads, we have to recommend denial for basically every variance." He further explained that it would be a "direct conflict" as it could be administratively approved but would be denied under the criteria for a variance. Mr. Grate stated that the code was specifically written that it reviewed under the criteria of a special permit to avoid the conflict.

As per Mr. Waitkus' request, Celia Schmidt, 11920 Southwest 27 Court, reintroduced herself for the record.

Mr. Waitkus clarified that staff recommended moving the proposed home forward 2.8 feet, and asked Ms. Schmidt if that was an option. Ms. Schmidt explained that reminded that the community entranceway and the landscaping were in front, adding that moving the house forward was an option, but there was a cost involved. She further explained that it was necessary to have a walkway to get to the front of the house and she felt that this was not possible to achieve according to code because of the existing entrance landscaping.

Mr. Waitkus asked Mr. Grate to confirm that the setback was measured from the property line [inside]. Mr. Grate replied affirmatively. Mr. Waitkus asked if the setback included sidewalks. Mr. Grate stated that a sidewalk could be built within the setback. Mr. Grate clarified that with the existing landscaping the proposed house could be moved up and a Ms. sidewalk could also be included.

Ms. Moore calculated that one foot, four inches was the necessary variance in the rear of the property. She felt that neighbors would not object to amount of space.

Ms. Schmidt showed the house plan. She pointed out the areas of the house that were affected if the special permit was denied. Again Ms. Schmidt stated that the problem in front of the house was the existing four rows of community landscaping at the entranceway to the community and she was not permitted to remove this landscaping.

Ms. Moore was concerned that the community landscaping was on Ms. Schmidt's property. Ms. Schmidt stated that it was part of the master plan for the community. Ms. Moore clarified that the setback requirement was also part of the master plan of the community. Ms. Schmidt felt there was no impact on the value of the property and the privacy of the neighbors. She thought that "in the beginning, if they objected to it that nothing could be built there, and now they [the developer] realized that it's either a single story or two story." Ms. Schmidt

stated that one of the two neighbors who had objected withdrew their objection. Ms. Schmidt stated that Mr. Grate had spoken to these neighbors and they were present at this hearing.

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Ms. Moore asked if only two neighbors were affected and Ms. Schmidt replied affirmatively. Ms. Schmidt added that moving the landscaping would cost \$3,000.00.

Vice-Chair Stahl opened the public hearing.

Greg Tait, 12041 Ashford Lane, addressed the Board. Mr. Tait was one of the two neighbors directly affected by this item. Mr. Tait stated that he had originally written a letter of objection because he thought there were no alternatives. He explained that there were two entrances to the home, one through the garage and the other through the front door. Mr. Tait also explained that he was more amenable to a one-story house than a two-story house as he felt the latter would negatively impact property values. Mr. Tait wanted a compromise and agreed with Ms. Moore that there would be no complaints about a one foot, four inch change.

Ms. Moore asked Mr. Tait if he still objected to this variance. She then asked if Mr. Tait believed a four-foot setback would make a difference in the value of his property. Mr. Tait stated that if he knew the petitioner was going to build this house and needed "a couple of feet" in order to build a one story house, he had no objection. He agreed that the petitioner needed a walkway and stated that if the shrubbery could be removed, that would be an effective solution.

Mr. Bender referred to Mr. Tait's letter, which stated that the petitioner's lot was going to be a common area as per the developer. Mr. Bender asked if there was documentation regarding this statement. Mr. Bender stated that this was brought up in conversation with the salesman, especially because the lot was unusually shaped.

Rich Danze, 12081 Ashford Lane, addressed the Board. Mr. Danze was one of the two neighbors directly affected by this item. Mr. Danze confirmed that the community was initially informed that the petitioner's lot was a common area. He explained that he had initially objected to this special permit, but explained that he and his wife were willing to compromise. Mr. Danze stated that relative to the other homes in the development, the four-foot change was substantial. He added that some of his view would be blocked. Mr. Danze did not object, but wanted to be assured that the change would have minimal effect.

Vice-Chair Stahl seeing none, closed the public hearing.

Ms. Schmidt explained that the initial plans for this house were for a two-story structure. Ms. Schmidt felt that there would be no devaluation of her neighbors' property with her request. She stated that her home met all the criteria of the community.

Vice-Chair Stahl asked Ms. Schmidt if she had spoken with the homeowners association regarding removal of one row of shrubs. Ms. Schmidt stated that she had spoken with Casey in Planning and Zoning. She referred to a letter on record which stated that if the shrubbery died, it would have to be replaced; there the 17 homeowners in the community would probably not approve the removal of shrubbery.

Mr. Bender warned that if Ms. Schmidt added Ficus hedges along the paver walkway, she would have problems with the roots displacing the pavers.

Ms. Schmidt explained that she needed a wheelchair accessible walkway for elderly relatives. She reiterated that she did not feel her request would devalue her neighbors' properties, adding that her expenses for the delay had exceeded \$15,000.00.

Vice-Chair Stahl asked what the side setback on Lot 11 was. Ms. Schmidt stated it was 25 feet, and Mr. Grate confirmed. Vice-Chair Stahl clarified that Ms. Schmidt's property had a setback of 11 feet more than that of Lot 11.

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Ms. Moore felt the difference of four feet would not have a negative impact on property value. Vice-Chair Stahl clarified it was one foot, four inches. Mr. Waitkus agreed with Ms. Moore.

Mr. Danze felt that he was being threatened with a two-story house. He stated that he was willing to compromise, but insisted that Ms. Schmidt felt it was no "a big deal." He added that it was a disadvantage if other lots on the street had 100 foot rear setbacks.

Ms. Schmidt stated she was not threatening, adding that if she felt discussion and compromise was not possible, she would have built a two-story house as it was within her rights.

Ms. Moore made a motion, seconded by Mr. Bender, to approve the request. Mr. Kiar clarified that this was a motion to approve the petitioner's request and not staff's recommendation. In a roll call vote, the vote was as follows: Vice-Chair Stahl, no; Mr. Bender, no; Ms. Moore, yes; Mr. Waitkus, yes. (Motion denied, 2-2).

Mr. Bender made a motion to approve staff recommendation. Vice-Chair Stahl closed public hearing. Vice-Chair Stahl passed the gavel and seconded the motion. In a roll call vote, the vote was as follows: Vice-Chair Stahl, yes; Mr. Bender, yes; Ms. Moore, yes; Mr. Waitkus, yes. (Motion carried, 4-0).

Vice-Chair Stahl stated this item was approved as per staff's recommendation to move the house forward 2.8 feet and this item would go before Town Council June 6, 2001.

5. OLD BUSINESS

None.

6. NEW BUSINESS

None.

7. COMMENTS AND/OR SUGGESTIONS

Vice-Chair Stahl welcomed Mr. Bender to the Planning and Zoning Board.

8. ADJOURNMENT

There being no further business to discuss, the meeting was adjourned at 8:20 p.m.

Date Approved _____

Chair/Board Member